

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On January 21, 2017 appellant, then a 52-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2017 she strained her back when she separated mail out of postal equipment while in the performance of duty. She stopped work on January 22, 2017 and returned on January 24, 2017.

By decision dated March 10, 2017, OWCP accepted that the January 20, 2017 incident occurred, as alleged, but denied appellant's claim because the medical evidence of record failed to contain a medical diagnosis causally related to the accepted incident. Thus, it found that she had not established the medical component of fact of injury.

On March 29, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review which was held on July 13, 2017. She submitted additional medical evidence. By decision dated August 23, 2017, the hearing representative affirmed the March 10, 2017 decision.

Appellant appealed to the Board. By decision dated September 4, 2018, the Board affirmed the August 23, 2017 decision, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted January 20, 2017 employment incident.

On September 10, 2019 appellant requested reconsideration.<sup>4</sup>

Appellant submitted a January 21, 2017 lumbar spine x-ray examination report, a March 7, 2017 report cosigned by Dr. Melina J. Khwaja, a Board-certified emergency medicine physician, and an August 21, 2019 letter from a physician assistant.

By decision dated September 12, 2019, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

---

<sup>3</sup> Docket No. 18-0709 (issued September 4, 2018).

<sup>4</sup> Although appellant claimed to be filing a request for reconsideration from the Board's September 4, 2018 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. 20 C.F.R. § 501.6(d). Although the September 4, 2018 Board decision was the last merit decision, the hearing representative's August 23, 2017 decision is the appropriate subject of possible modification by OWCP.

## **LEGAL PRECEDENT**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>5</sup> This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> Timeliness is determined by the document receipt date (*i.e.*, the received date in OWCP's Integrated Federal Employees' Compensation System (iFECS)).<sup>7</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>8</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.<sup>9</sup> OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.<sup>10</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>11</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>12</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.<sup>13</sup>

---

<sup>5</sup> 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>8</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>9</sup> See 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>10</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also 20 C.F.R. § 10.607(b); *supra* note 7 at Chapter 2.1602.5 (February 2016).

<sup>11</sup> *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>12</sup> *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 7 at Chapter 2.1602.5(a) (February 2016).

<sup>13</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.<sup>14</sup> The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.<sup>15</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant's September 10, 2019 request for reconsideration was untimely filed.

OWCP's regulations<sup>16</sup> and procedures<sup>17</sup> establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>18</sup> The most recent merit decision was the Board's September 4, 2018 decision. As appellant's request for reconsideration was received on September 10, 2019, more than one year after the September 4, 2018 merit decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in its August 23, 2017 decision.<sup>19</sup>

The Board further finds, however, that the case is not in posture for decision as to whether appellant's September 10, 2019 reconsideration request demonstrated clear evidence of error.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>20</sup> Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>21</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.<sup>22</sup> As well, OWCP's

---

<sup>14</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 7 at Chapter 2.1602.5(a) (February 2016).

<sup>15</sup> *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

<sup>16</sup> 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>17</sup> *Supra* note 7 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>18</sup> 20 C.F.R. § 10.607(b); *see A.M.*, Docket No. 20-0143 (issued October 28, 2020); *Debra McDavid*, 57 ECAB 149 (2005).

<sup>19</sup> *Id.* at § 10.607(b); *see M.W.*, Docket No. 17-0892 (issued May 21, 2018); *see S.M.*, Docket No. 16-0270 (issued April 26, 2016).

<sup>20</sup> *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

<sup>21</sup> 5 U.S.C. § 8124(a).

<sup>22</sup> 20 C.F.R. § 10.126.

procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>23</sup>

In denying appellant's untimely reconsideration request, OWCP failed to analyze whether it was sufficient to demonstrate clear evidence of error. The September 12, 2019 decision simply noted: "we did consider your request under 20 C.F.R. § 10.607." However, OWCP did not address appellant's statement in her reconsideration request letter. Furthermore, it provided no discussion relative to the medical evidence submitted.<sup>24</sup>

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect.<sup>25</sup> The Board will therefore set aside OWCP's September 12, 2019 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's untimely reconsideration request.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant's September 10, 2019 request for reconsideration was untimely filed. However, the Board further finds that the case is not in posture for decision with regard to whether the untimely reconsideration request demonstrates clear evidence of error.

---

<sup>23</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>24</sup> See *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

<sup>25</sup> OWCP regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.5(a) (February 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for action consistent with this decision of the Board.

Issued: April 28, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board